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29 CFR Subtitle A (7-1-11 Edition)

the purview of the Act; however, “sub-contracts” awarded under “prime contracts” between the Small Business Administration and another Federal agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act’s coverage, although the requirements are different for contracts in excess of \$2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

§4.111 Contracts “to furnish services.”

(a) “*Principal purpose*” as criterion. Under its terms, the Act applies to a “contract * * * the principal purpose of which is to furnish services * * *.” If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§4.130 *et seq.*, no hard and fast rule can be laid down as to the precise meaning of the term *principal purpose*. This remedial Act is intended to be applied to a wide variety of contracts, and the Act does not define or limit the types of services which may be contracted for under a contract the principal purpose of which is to furnish services. Further, the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage. Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is

largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important elements of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case. This principle is illustrated by the examples set forth in §4.131.

(b) *Determining whether a contract is for “services”, generally.* Except indirectly through the definition of *service employee* the Act does not define, or limit, the types of *services* which may be contracted for under a contract “the principal purpose of which is to furnish services”. As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see §4.113). Examples of some such contracts are set forth in §§4.130 *et seq.* In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for *services* those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in both the House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: “The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply” (H. Rept. 948, 89th Cong., 1st Sess., p. 1; see also S. Rept. 798, 89th Cong., 1st Sess., p. 1; daily Congressional Record, Sept. 20,

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1965, p. 23497). A similar understanding of contracts principally for *services* as embracing contracts other than those for construction or supplies is reflected in the statement of President Johnson upon signing the Act (1 Weekly Compilation of Presidential Documents, p. 428).

§4.112 Contracts to furnish services "in the United States."

(a) The Act and the provisions of this part apply to contract services furnished "in the United States," including any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. The definition expressly excludes any other territory under the jurisdiction of the United States and any United States base or possession within a foreign country. Services to be performed exclusively on a vessel operating in international waters outside the geographic areas named in this paragraph would not be services furnished "in the United States" within the meaning of the Act.

(b) A service contract to be performed in its entirety outside the geographical limits of the United States as thus defined is not covered and is not subject to the labor standards of the Act. However, if a service contract is to be performed in part within and in part outside these geographic limits, the stipulations required by §4.6 or §4.7, as appropriate, must be included in the invitation for bids or negotiation documents and in the contract, and the labor standards must be observed with respect to that part of the contract services that is performed within these geographic limits. In such a case the requirements of the Act and of the contract clauses will not be applicable to the services furnished outside the United States.

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§4.113 Contracts to furnish services "through the use of service employees."

(a) *Use of "service employees" in a contract performance.* (1) As indicated in

§4.110, the Act covers service contracts only where "service employees" will be used in performing the services which it is the purpose of the contract to procure. A contract principally for services ordinarily will meet this condition if any of the services will be furnished through the use of any service employee or employees. Where it is contemplated that the services (of the kind performed by service employees) will be performed individually by the contractor, and the contracting officer knows when advertising for bids or concluding negotiations that service employees will in no event be used by the contractor in providing the contract services, the Act will not be deemed applicable to the contract and the contract clauses required by §4.6 or §4.7 may be omitted. The fact that the required services will be performed by municipal employees or employees of a State would not remove the contract from the purview of the Act, as this Act does not contain any exemption for contracts performed by such employees. Also, as discussed in paragraph (a)(3) of this section, where the services the Government wants under the contract are of a type that will require the use of service employees as defined in section 8(b) of the Act, the contract is not taken out of the purview of the Act by the fact that the manner in which the services of such employees are performed will be subject to the continuing overall supervision of bona fide executive, administrative, or professional personnel to whom the Act does not apply.

(2) The coverage of the Act does not extend to contracts for services to be performed exclusively by persons who are not service employees, i.e., persons who are bona fide executive, administrative or professional personnel as defined in part 541 of this title (see paragraph (b) of this section). A contract for medical services furnished by professional personnel is an example of such a contract.

(3) In addition, the Department does not require application of the Act to any contract for services which is performed essentially by bona fide executive, administrative, or professional employees, with the use of service employees being only a minor factor in